THE THERAPEUTIC STATE

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The psychiatrist as accomplice

SINCE WORLD WAR II PSYCHIatry has had an exceedingly good press, especially in the United States. A combination of physician and priest, the psychiatrist, it seemed, could do no wrong. He dealt with the most "difficult" patients and even if his methods were sometimes "heroic," his aim was always "therapeutic."

In the last few years, especially when looking at Russian psychiatry, the press has discarded its rose-colored glasses. The fact that, in the United States, psychiatrists *not only* do the same things their colleagues in Russia do, but, in addition, systematically act to exonerate individuals who have killed other, innocent individuals, seems so far to have escaped the attention of civil libertarians and journalists.

There are countless ways in which psychiatry may be "abused." With respect to incarceration, psychiatry may be abused in two ways: by inculpating the innocent and by exculpating the guilty. For example, when a "mentally healthy" dissident is diagnosed as schizophrenic and committed to a mental hospital in Russia, we have an instance of the psychiatric inculpation of an innocent person as permanently insane. Such acts are now condemned by Western intellectuals and journalists as the psychiatric abuses of a totalitarian government. When, on the other hand, a so-called mad killer is diagnosed as suffering from some form of mental illness and is acquitted by reason of insanity in America, we have an instance of the psychiatric exculpation of a person as temporarily insane. Such acts are now praised by Western intellectuals and journalists as the scientific applications of humane psychiatry. In my opinion these two sets of acts are symmetrical: In the one, the psychiatrist acts as an accessory to what—morally speaking—is a crime by the state; in the other, he acts as an accessory to what—morally speaking—is a crime by an individual. Moreover, since killing an innocent person is a graver offense than imprisoning him, the American psychiatrist who helps to acquit a killer as not guilty by reason of insanity should be regarded as having committed a graver "psychiatric abuse" than his Russian colleague who helps to imprison an innocent person as a schizophrenic.

The death of Randolph Evans and the subsequent trial of his killer illustrate a typically American psychiatric abuse. Its professional acceptance and popular approval illustrate that Americans love their own "abuses" of psychiatry (which, of course, they regard as its "proper uses") at least as much as the Russians love theirs.

Randolph Evans was a black youth who lived in Brooklyn. On Thanksgiving Day in 1976, when he was 15 years old, he was shot and killed by a white policeman named Robert H. Torsney. Officer Torsney was charged with murder while on duty. He pleaded insanity. On December 1, 1977, an all-white jury acquitted Torsney as not guilty by reason of insanity. To my knowledge, no reporter, no politician, no civil libertarian, domestic or foreign, has denounced the Torsney verdict as another instance of the American abuse of psychiatry.

Courtroom psychiatrists who seek to exonerate killers are, morally speaking, accomplices to the taking of an innocent life.

WHY WAS EVANS KILLED? Why was Torsney acquitted? The shooting took place shortly before midnight, when Officer Torsney and his partner answered a radio report of an armed man in an East New York housing development where young Evans lived with his family. As the policemen left the building, Torsney was approached by the boy and five others. According to the *New York Times*, "Young Evans paused to speak to Officer Torsney, who pulled his gun from his holster and shot the boy in the head. He died several hours later."

Although Torsney claimed that he acted in self-defense, his legal defense was that "he was insane because of an epileptic psychomotor seizure suffered at the time of the crime." The 32-year-old policeman had no record of any previous epileptic attacks. Until the homicide, according to police personnel files, Torsney "had never fired his gun, had an unblemished record, and had no signs of emotional handicap." On the witness stand, the policeman testified that he had shot Evans "after he saw the boy reach into his waistband for what appeared to be a gun." No gun was found and none was seen by witnesses.

To maintain a defense of insanity, the accused needs a psychiatrist to support the claimed defense by means of expert testimony. Torsney had such a psychiatrist in the person of Dr. Daniel Schwartz, chief of forensic psychiatry at Kings County Medical Center (who had earlier testified that David Berkowitz, otherwise known as the Son of Sam, was schizophrenic and was psychiatrically unfit to stand trial). Dr. Schwartz lent his prestige and persuasive powers to the task of convincing the jury to acquit Torsney: Not only did he claim that Torsney suffered from psychomotor epilepsy, but also that the policeman had had an attack at the

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moment of the shooting, that the shooting was the result of the epilepsy, and that Torsney "acted automatically and suffered from organically caused amnesia."

It is, of course, the task of the prosecution to demolish such psychiatric claims. In this case, however, the prosecution called on a psychiatrist who believes that virtually everyone is mentally ill. Dr. Herbert Spiegel, clinical professor of psychiatry at the Columbia University College of Physicians and Surgeons and a well-known "hypnotist," testified that the policeman "suffered from hysterical dissociation, an emotional rather than an organic disorder that is not categorizable as legal insanity."

The judge gave the jury a choice among five possible verdicts: second-degree murder, first-degree manslaughter mitigated by extreme emotional disturbance, second-degree manslaughter, not guilty by reason of insanity, or self-defense. The jury brought in a verdict of not guilty by reason of insanity.

Torsney has been ordered confined for observation for 60 days in a facility of the State Mental Hygiene Department to determine whether he is a "danger to himself or to the community." According to the *New York Times*, because Tornsey's "insanity had a specific organic cause," he may retire from the police force on a full medical disability pension.

THE FACTS SPEAK FOR themselves. Randolph Evans, a 15-year-old black, is killed by a white policeman before numerous witnesses. The killing was unprovoked, a fact tacitly acknowledged by the defendant's own insanity plea (which implies that, but for his alleged insanity, he would be guilty of the killing). A white psychiatrist testifies for the defense that Robert Torsney was "legally" insane at the time of the offense; another white psychiatrist testifies for the prosecution that Torsney was "illegally" insane. Finally, a white jury acquits Torsney, leaving the unprovoked killing of an innocent person unpunished. I hold my fellow psychiatrists largely responsible for this stubborn and willful destruction of law and justice.

Such, at least, is the message I draw from these facts. When I say that "the facts speak for themselves," I speak, of course, metaphorically. Facts don't speak, only persons do. What, then, do other psychiatrists hear when listening to these facts? Remarking on this same case, as well as on several other recent cases of "trying the mad"—such as that of the Michigan woman, also acquitted as not guilty by reason of insanity, who killed her husband by pouring gasoline on him while he was sleeping and then setting him on fire—Alan A. Stone, professor of law and psychiatry at Harvard University, comes to a totally different conclusion. "Reading about these developments," he writes in the *New York Times*, "the public seems to get angry at psychiatry and psychiatrists. Yet the current situation is the work of judges, lawyers, and legislators; psychiatrists play a minor if inept role."

Although partly true, such a judgment exonerates psychiatrists of a responsibility that is, in my opinion, wholly theirs—that is, the responsibility for supporting the insanity defense. Let us again recall in this connection the accusations now so fashionably leveled against Russian psychiatrists for "abusing their profession." Dr. Stone has not, to my knowledge, defended these Soviet psychiatrists by claiming that they "play a minor if inept role" in incarcerating dissidents in madhouses. Why not? Surely, because of the differences between Soviet and American societies, such an excuse would be more valid for Russian psychiatrists than for American psychiatrists. Why, then, should we accept Stone's plea of ineptness on behalf of his colleagues, the true nature of whose deeds is becoming increasingly difficult to disguise?

I submit that the courtroom psychiatrist who seeks to exonerate a killer of responsibility for his act is, from a moral point of view, an accomplice to the act of taking an innocent life. Psychiatrists choose whether to testify in court or not, just as people choose whether to kill or not. Psychiatrists who aid and abet the insanity defense are no more inept than their accomplices are insane. Instead of calling such acts inept or insane, we ought to call them wicked and immoral. Not until we do so will our homes and streets be safe from criminals, and our laws and courts from psychiatrists. ❑